

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. (S) No.6879 of 2006

PETITIONER

Prabhuram Sinha, aged about 37 years, s/o Shri Sukhram Sinha, R/o village Gadadih (R), post Rampur Bakhara, Tahsil Kurud, District Dhamtari(CG)

Versus

RESPONDENTS

- 1 The State of Chhattisgarh Through Secretary, Panchayat and Rural Department, DKS Bhawan, Raipur
- 2 The Collector, Dhamtari
- 3 Deputy Director, Panchayat and Social Welfare, Dhamtari (CG)
- 4 Chief Executive officer, Janpad Panchayat, Kurud District Dhamtari
- 5 Gram Panchayat, through Sarpanch village Gadadih(R) Tahsil Kurud, District Dhamtari(CG)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Appearance:

Shri Akhilesh Kumar, counsel for the petitioner.
Shri Pradeep Singh, Panel Lawyer, for the State/ respondents no. 1 to 3.
Shri B.D. Guru, counsel for respondent no.4.
Shri R. Pradhan, counsel for respondent No.5.

ORAL ORDER
(22.11.2007)

SUNIL KUMAR SINHA, J.

Heard.

The petitioner was appointed as a Panchayat Karmi of Gram Panchayat, Gadadih, Tahsil Kurud, District Dhamtari on 27.10.1995. The copy of his appointment order has been filed as Annexure P-1. It is stated that he was also declared as Secretary of the concerned Gram Panchayat under the provisions of Section 69 (1) of C.G. Panchayat Raj Adhiniyam, 1993(hereinafter referred to as the "Act").



Learned counsel for the petitioner argues that the petitioner was removed from the post of Panchayat Karmi(Secretary) by impugned order dated 19.8.2003(Annexure P-2) without following the procedure laid down under the relevant Rules, i.e. C.G. Panchayat Service(Discipline and Appeal) Rules, 1999. He argues that when the Rules of 1999 were applicable in case of the petitioner, who was initially appointed as a Panchayat Karmi and was declared as Secretary under Section 69(1) of the Act, substantial compliance of Rule 7 of the aforesaid Rules was required, failing which, the impugned order would not be sustained in the eyes of law.

Return has been filed on behalf of respondents No. 1 to 3 as also on behalf of respondent No.4.

It has been contended by respondents No. 1 to 3 that the order dated 19.8.2003(Annexure P-2) and the revisional order dated 6.4.2004(Annexure P-3), passed by the Collector would show that the petitioner was served with a show cause notice, which he refused to accept and he has also misbehaved with the Clerk in an intoxicated condition. Even he did not appear in the office of Dy. Director (Panchayat and Social Welfare), Dhamtari along with the relevant records, therefore, the impugned order has to be passed and the petitioner cannot claim that there was a violation of principles of natural justice.

Respondent No.5 has simply adopted the return filed by respondents No. 1 to 3.

I have heard learned counsel for the parties at length.

In the matter of Brindawan Vishwakarma V. State of Chhattisgarh and others, 2007(2) BLJ, 65.

It has been held that the persons appointed as Panchayat Karmis under the Panchayat Karmi Yojna, which was a scheme under sub-section (1) of Section 70, shall also be included within the meaning of word "such officer and servants" as contemplated in sub-section (2) of Section 70 of the Act and they would be governed by the Rules of 1999 which has been prescribed with reference to sub-section (2) of Section 70 of the said Act.

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This Court held that the Rules of 1999 were applicable in case of Panchayat Karmis, who were conferred with the powers of Secretary under Section 69(1) of the Act and while imposing penalty, a substantial compliance of rule 7 of the aforesaid Rules was required, failing which, the orders of penalty would not be sustained.

In the present case, admittedly there is no substantial compliance of Rule 7 of the aforesaid Rules. Though it appears in the impugned order that a Show Cause Notice was sent to the petitioner, but it does not appear that any formal enquiry was conducted in the manner referred to in Rule 7. Because the disciplinary authority has not framed definite charges on the basis of allegations and the same were not communicated to the petitioner along with the statement of allegations, no written statement was required to be submitted within the time specified and so many other formalities, which are there, mentioned in Rule 7 have not been complied with.

Therefore, it is clear that the order has been passed in utmost violation of fundamental principles of natural justice as also in violation of the Rules of 1999. It deserves to be quashed.

Accordingly, the petition succeeds. The same is allowed. The impugned order dated 19.8.2003(Annexure P-2) is hereby quashed. The petitioner shall be entitled to all the benefits in consequence of quashing the impugned order of removal. However, if so required, the State authorities shall be free to initiate the disciplinary proceedings against the petitioner for the alleged misconduct committed by him under the provisions of the Rules referred to above.

There shall be no order as to costs.

Sd/-
Sunil Kumar Sinha
Judge

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